

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

DEMIAN JOSEPH PINA,

Petitioner,

: Case No. 3:15-cv-080

- vs -

District Judge Thomas M. Rose
Magistrate Judge Michael R. Merz

UNITED STATES MARSHAL
FOR THE SOUTHERN DISTRICT
OF OHIO,

:

Respondent.

**REPORT AND RECOMMENDATIONS ON MOTION FOR LEAVE
TO APPEAL *IN FORMA PAUPERIS***

This case is before the Court on Petitioner's Motion for Leave to Appeal *in forma pauperis* (ECF No. 6). The Motion should be denied because the appeal would be frivolous.

Pina filed this action under 28 U.S.C. § 2241 seeking a writ of habeas corpus for release from pretrial detention. The day after filing the Magistrate Judge recommended dismissal of the habeas corpus action because Pina had a plain and adequate remedy by law to appeal the pretrial detention order (Report and Recommendations, ECF No. 2). Pina never objected and Judge Rose adopted the Report and dismissed the case on March 24, 2015 (ECF No. 3, 4). Pina's time to appeal from that dismissal expired thirty days later on April 23, 2015. He did not file his Notice of Appeal in this case until December 9, 2015 (ECF No. 5).

Because Pina filed no objections, he has forfeited his right to raise any issues on appeal. In addition, the time for appeal is jurisdictional, so the Court of Appeals does not have

jurisdiction over an appeal of the dismissal. In the meantime, Pina has appealed the detention order in the criminal case itself (Case No. 3:14-cr-023, ECF No. 49). Thus an appeal on the question of detention is already before the Sixth Circuit.

For these reasons, the Motion for Leave to Appeal *in forma pauperis* should be denied.

December 10, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).